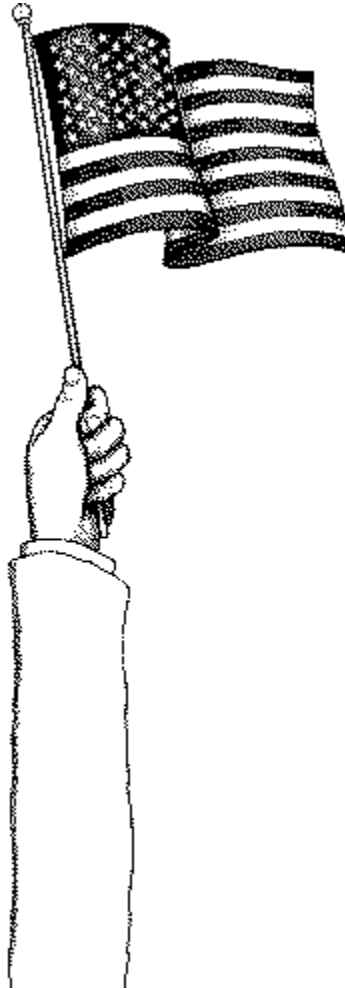


**THE
LANDOWNER'S GUIDE
TO
EASEMENTS
AND
RIGHT OF WAYS**



The Landowners Guide To Easements And Right Of Ways

God Bless America



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Goodlife Publishers

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The Landowners Guide To Easements And Right Of Ways

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To

The Landowners

New knowledge is the most valuable commodity on earth. The more truth we have to work with, the richer we become.

Kurt Vonnegut Jr., Breakfast of Champions

Introduction

Due to expansion in the petroleum, railway, electric and telecommunications industries, more and more easements for transporting products are being sought from private landowners. Rural water districts are expanding their plants to supply fresh water to rural homesteads and businesses. The facilities installed on these easements can range from environmentally benign fiber optics cables to huge electric transmission lines and large petroleum pipelines. In the governmental sector, roads and other public facilities are being upgraded, expanded and re-aligned. In this guide all entities seeking an easement will be called "Grantee" and the landowners will be referred to as "Grantor". The Grantor will GRANT an easement and right of way to the Grantee.

The preferred location of these various projects is privately owned lands. The basic reasons for this are easily understood: 1) security is much better if access is limited, 2) a single landowner is more easily dealt with, 3) one payment is made - no pesky leases or licenses, 4) the shortest distance between two points is a straight line. Obviously, if a service is being brought directly to you the main motivation for you to grant an easement is to receive the service.

Your rights and those of the Grantee can vary widely depending upon existing state laws. This guide assumes that you are willing to negotiate in good faith and that the Grantee is likewise inclined. If you believe that you are being unfairly dealt with, contact an attorney - the Grantee certainly will. I find it

amazing that a landowner will encumber his land forever without consulting an attorney; but, some people know it all or don't fully comprehend the ramifications of their actions. If you are not well versed in real estate law, and definitely *before* signing a Grant, spend a few bucks on legal counsel. A word of caution: most attorneys will not have knowledge of the specific information contained in this guide. It would be wise to enlighten them on certain subjects or have them buy their own copy of this guide. Don't give up your copy, it is invaluable.

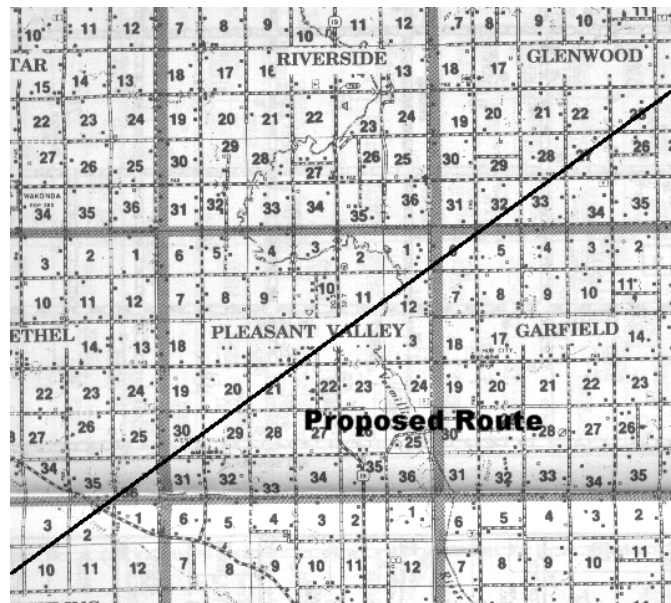
Most of the companies seeking easements and their representatives are honorable. Their business is to market a product to satisfy consumers. They have little incentive to employ deceptive practices or make unreasonable demands and are subject to the same laws as you and I regarding fraudulent practices.

Don't expect to have a local representative make split-second commitments regarding modifications to the Grant - in all organizations there is a chain of command. Your proposed modifications will go up the organizational ladder and come back down the same way. If you have identified all of the modifications then this process will likely happen one time only. To maintain your integrity and save time, don't propose modifications piecemeal. Any discussions you have with the company's representative should be frank and directed toward reaching a mutually acceptable position.

This guide will explain the processes of easement procurement and how to make the best arrangement possible. It

s not possible to anticipate exactly what your specific needs will be but by reviewing the clauses presented in this guide you should be able to identify your areas of concern. Constructing the actual wording for clauses is something that may have to be handled by your attorney. If you propose one clause and the Grantee modifies it and returns it to you, it is probably time to see your lawyer.

The Landowners Guide To Easements And Right Of Ways



Chapter I - The Start

Let's assume a company has decided it needs to complete a project connecting point A to point B. Engineers decide what width right of way will be necessary to contain the proposed facilities. In most instances the width will be expressed in feet but may be in rods (16.5 feet = 1 rod). For things such as buried phone cables the width is usually 1 rod. For pipelines and overhead transmission lines, the width varies and can run up to hundreds of feet.

Now the engineers assemble maps and begin to look for the best route. They attempt to avoid densely populated areas and natural or man-made obstructions, keeping in mind that the shorter the route the less expensive to acquire, construct and maintain. Once a route is drawn on the maps they head for their vehicles and drive to the vicinity of the proposed route. Using public roads, they drive the line as well as possible and take many notes to show problem areas and to refine the actual location.

Sets of plans are prepared showing the preferred route and these plans are given to the right of way group. The right of way group procures plat books to cover the route and draws a line depicting the route. Soon all the landowners are identified and a file is created for each property to be impacted. Agents are sent to the courthouses to verify land descriptions and ownership. Land values are determined by researching recent sales of similar lands adjacent to the route.

A series of documents are prepared and distributed to the field agents who will be contacting the landowners. Agents are required to keep a log of contacts with landowners and prepare reports about these contacts. So far most landowners are unaware that a project is planned for their area. The field agents usually prefer to make cold calls for the first contact. The agents attempt to develop a rapport with the landowners by explaining whom they are, whom they represent and why they are calling. A good agent will take the time to explain the project's different phases and how it will progress. A good agent will show you all the paperwork and will attempt to get you to sign on the dotted line as soon as possible, from his point of view right now would be the best. Keep in mind that the agent is your conduit to the company.

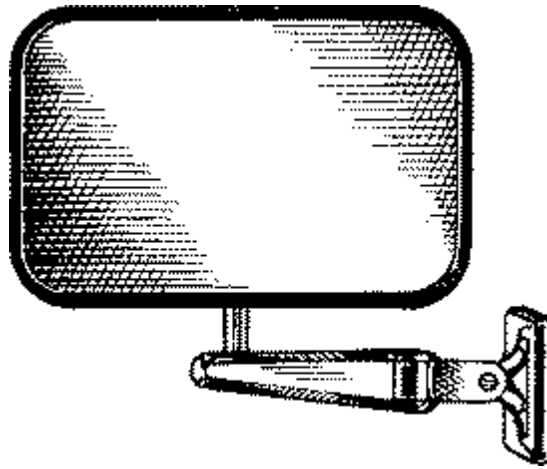
Stop and think about the situation. A person you don't know, representing a company you may not have heard of, wants you to grant an easement for a set amount of money. The company and its lawyers have prepared all the paperwork and you can be sure that it wasn't done with you and your particular situation in mind. What you are expected to sign is an instrument that is to the benefit of the company's business. In most instances the amount you are to be paid is fair, but how do you know without a little research of your own? What are your responsibilities and what are the company's responsibilities? Most of the time a legal survey is not included and the proposed easement is tantamount to a blanket easement for your entire tract of land - how is the easement described? What exactly is going to be placed on your property?

I have negotiated countless easements and I wouldn't sign right away. The agent will come back after you have had time to think about the situation. Believe me, they'll come back. Right now you need information to level the playing field. In the rest of this book you are going to learn how you can modify and enhance the easement to protect your way of life. You will discover ways in which to protect yourself, your family, your business, your property, your livestock and your heirs.

The time to find out about the Grantee's power of eminent domain is right now. Don't rely upon hearsay. Call your attorney and have him determine if Eminent Domain will apply in your situation. The Grantee's ability to employ Eminent Domain does not relieve him of the responsibility to negotiate in good faith. To be realistic, the Grantee's expenses for such a procedure are quite high because preparing the case is time consuming and ties up a lot of human resources; furthermore, it causes bad feelings in the community, and it is quite possible that your attorney fees and other expenses will have to be paid by the Grantee. Since Grantees are not eager to use Eminent Domain, your reasonable suggestions regarding the Grant will be given due consideration. Please see the chapter regarding Eminent Domain to familiarize yourself with the procedures.

I have performed thousands of title searches over the years and have assembled a compendium of clauses that may be added to Grants to help you keep your land rights as intact as possible. These clauses are meant to give you insight into what has been negotiated by other landowners such as you.

The Landowners Guide To Easements And Right Of Ways



Chapter II - Watching Your Backside

If you don't watch your backside someone is likely to take a big bite out of it. Keep your lines of communication open. You should have ways of contacting the right of way agent, contractor and Grantee. Keep the phone numbers handy during the duration of the project.

The first thing to realize is that the Grantee will keep good records. You need to do the same. Keep a journal of your entire interaction from the first visit to the completion of the project, get names if you talk to anyone and note dates. It is best to have another person present during your talks, if someone is with you make a note of it. Keep that journal at hand over the years to document ongoing dealings with the Grantee. Take a few rolls of pictures before the initial survey, before and after construction and before and after any maintenance. Develop the film right away and label the snapshots, give a brief description of the shot and date it. Keep the photos with the journal. The Grantee is responsible for any damages occurring as a result of his activities on your property.

You are going to be presented with a sheaf of papers during the easement process. The most important document is the Grant of Easement and Right of Way. All subsequent documents will be based upon the contents of the Grant. Keep copies of all paperwork.

Even before you see this paperwork you may be asked to give permission for a survey. Go ahead and sign the permission

orm, any registered surveyor (or persons under the direct supervision of the surveyor) has the right to enter your property for survey purposes.

Take a look at the Grant form on the opposite page.

The Landowners Guide To Easements And Right Of Ways

GRANT OF EASEMENT

Know all men by these presents, that _____, the Grantor(s), in consideration of One Dollar (\$1.00) and other good and valuable consideration received from _____, the Grantee, hereby grant(s) and convey(s) unto said Grantee, its successors and assigns, a perpetual right of way and easement to lay, install, construct, reconstruct, erect, repair, supplement, maintain, operate, and/or remove, at any times hereafter, its facilities and systems including but not limited to conduits, poles, wires, guys, anchors, cables, fixtures, monuments, manholes, and appurtenances, as it may deem necessary, and with the further right to permit the attachment of, and/or carry in conduit, wires, cables, and associated facilities of any other company with services and extensions therefrom in, over, and/or under our lands, with the right of ingress to and egress from and over said premises situated in

LEGAL DESCRIPTION OF YOUR LANDS

The easement granted herein shall be _____ feet () in width and is more fully described as follows:

STRIP DESCRIPTION (EITHER WRITTEN OR ATTACH EXHIBIT)

The easement and right of way hereby granted includes the perpetual right to cut, trim, and/or otherwise control any trees and/or brush which may endanger the safety of or interfere with the construction and use of said facilities and systems.

The Grantor(s) herein retain(s) the right to use said lands for any and all other purpose, provided that such use does not interfere with or impair the exercise of the easement granted herein.

YOUR CLAUSES GO HERE, SUCH AS: See Exhibit "A" attached hereto and by this reference incorporated herein.

To have and to hold the said easement and right of way to the said Grantee, its successors and assigns forever. It is agreed that the foregoing is the entire contract between the parties hereto, and that this written agreement is complete in all its terms and provisions.

IN WITNESS WHEREOF, the said Grantor(s) hereunto set their hand(s) this ____ day of _____, ____.

SIGNATURES

WITNESSES

NOTARIAL AFFIRMATION & SEAL

The wording in this blank form is called boilerplate. It is standardized for each company and customized to accommodate their particular facilities. You can modify the Grant by including modifying and limiting clauses in the Grant. The usual method of modifying the Grant is to make attachments known as Exhibits. It would be common to have all modifying clauses included in one Exhibit, a survey as a separate Exhibit and still other Exhibits for other items. There should be a sentence, preferably at the top of the Exhibit that looks like this: "Exhibit "A" to Grant of Easement dated xx/xx/xxxx between *John Jones* and *XYZZ, Inc.*". Additional Exhibits may be included such as the legal survey which may be designated as Exhibit "B". Put the same type of references on the Grant and the Exhibit. You can add as many Exhibits as necessary, just continue with the alphabetical designations.

Some Grantees supplement the Grant with an additional form which is complementary to the Grant. This additional form contains wording that gives the actual total consideration for the Grant and includes some wording explaining that the complement and the Grant, taken together, form the entire agreement between the parties. Some Grantees will want any clauses modifying the Grant to be included on this complementary form. Grantees reason that since the complement will not be recorded at the courthouse along with the Grant there is little likelihood of this information being available to the general public. This has the effect of preventing

anyone from going to the courthouse to see what other landowners have been able to negotiate and the amount of payment others have received.

I would have all clauses directly incorporated into the Grant to ensure they are recorded. The practice of using a complementary form as a vehicle to modify terms of the Grant is blatantly deceptive in my opinion. This form should only be used to detail the other valuable consideration specified in the Grant. Say you purchase a tract of land which is encumbered by such an Easement and Right of Way. A title search will not reveal all of the conditions of the Grant, therefore the abstract of the property will have a big hole in it since the abstract will not cover matters which are not of public record. In such an instance the Grantee's commitments have "slipped through the cracks" and I am sure you can understand that the Grantee has no incentive to reveal the secrets to future landowners. Furthermore, you, as a seller, are required to fully disclose all encumbrances to a potential buyer; if you fail to do this, your liability is large. I won't expose myself to such a liability if I can help it and you would be wise to think very carefully about taking that risk. No matter which method is used, keep copies of all paperwork handy for the duration of the Grant (usually forever).

Exhibit "A" to Grant of Easement from Michael Stevens
and Sylvia Stevens, husband and wife, to XZZZ, Inc.
dated March 28, 1994

- 1) Grantee agrees to place no above ground
- 2) Grantor reserves

Chapter III - Clauses To Live By

The Grantee is going to place facilities on your property. You need to feel safe being around the stuff. Find out exactly what will be put in place and just where inside the easement it will be located. Are above ground lines going to be high enough to accommodate all your activities? Are buried things going to be deep enough to be easily avoided by normal working of the land? Are ground level objects going to present problems with working the land? You must answer all these questions based upon your experience and convey the conclusions to the Grantee.

The Grantee will tell you where he wants to locate the easement. Here you need to tie down the exact location of the easement. This may need to be done by a legal survey and if so the Grantee will make the arrangements and pay for the survey. Have them arrange for the easement lines to be marked so that you can take a look at the actual location. It is usually possible to tie the easement down to a property line or right of way line without the need for a legal survey. For instance, if an easement runs north and south along the east side of your land it may read “the easterly 50 feet of the NE $\frac{1}{4}$ of Section 16”. Don’t settle for “a strip of land fifty feet in width located in the NE $\frac{1}{4}$ of Section 16” because this is what is called a blanket easement and encumbers all the land described in the Grant. Make it specific and tie it down.

The Grantee wants the right to lay, install, construct,

reconstruct, erect, maintain, operate, remove and supplement their facilities. This is rather common wording and is generally not a problem for you. However, now is the time to make sure that this easement covers only one cable, pipeline, transmission line or whatever they intend to install. These are called single line rights and are common. Though I have not discussed it, condemnation only affords the Grantee single line rights. If the Grantee should wish to add another line at a later date, they will have to enter into new negotiations for another easement. You need to demand that the easement be modified to cover just one line. This can be done by deleting references to multiple lines or preferably by constructing a separate clause stating that single line rights apply.

Grantee may install no more than one cable (pipeline, electric transmission line) upon Grantor's land pursuant to this Grant.

As you look over the Grant of Easement, you will notice that the Grantee may want the right to put everything but the kitchen sink on the easement. Such as: conduits, pipes, poles, wires, manholes, anchors, valves, monuments, markers, fixtures (not a kitchen sink), and appurtenances. If the engineering has progressed far enough, the Grantee may be willing to remove some of these words from the Grant. If the Grantee isn't going to install all these things then they don't need the right to do it. The more you convey to the Grantee, the less you have left. Make the Grantee explain exactly what will be installed upon your property.

The methodology of construction through and facilities to be placed upon the Grantor's land shall be as diagrammed and described on the attached Exhibit "A".

Markers and monuments and other above ground equipment, where possible, should be located where they are not bothersome to your use of the property. Have them located at property lines, ditch banks or other naturally occurring breaks in the landscape. You don't need the bother of driving around such obstacles. Wherever they are finally located you'll have to live with it. If you want, have the Grantee prepare a diagram showing where the markers and other things will be located and include it as another Exhibit to the Grant. Whatever happens, make sure any facilities are located a reasonable distance from buildings or other structures because you never know when you'll decide to add a room.

Grantee agrees not to construct above-ground lines or structures upon said easement strip, except for markers at fence lines, property lines and ditch banks as shown on the attached Exhibit "A", and except for the following specific structures:
_____, also as shown on said attached Exhibit "A".

Remember that you have the right to the use of the land in a manner not inconsistent with the Grantee's rights. You can farm, ranch, garden, landscape (no large trees) and do any other things you want. You can't put a building over the easement

nor do deep excavation. If, however, you have a good idea that your land may be developed for housing or industry in the not too distant future, you need to take some special precautions. You should reserve the right to cross the easement with roads, driveways, field tile and utilities, including gas, water, sewer, electric lines, cables and fences. Pursuant to this, you'll need to agree to notify the Grantee so that he can locate his line for your contractor and he may want to be present during construction. Your contractor will need to follow reasonable recommendations such as hand digging in the area of the facilities. If you are certain of future development, get it in writing and add it to the Grant.

Grantor retains ownership of the strip of land subject to the easement granted herein, and may continue to use same for any and all purposes which do not interfere with or prevent Grantee's use and enjoyment of the easement rights granted herein.

Grantor reserves the right to cross said easement with roads, driveways, field tile, fences and other utilities, including water, electricity, telecommunication lines, gas and sewer lines, providing, however, 1) Grantor and its agents and contractors shall at all times exercise reasonable care to avoid damage to Grantee's facilities, and 2) Grantor shall give Grantee not less than 3 days notice prior to engaging in construction activities within 10 feet of the easement, to permit Grantee to locate its facilities, and Grantor shall permit

Grantee to have a representative present during such construction activity and follow Grantee's representative's reasonable suggestions, such as hand digging, to avoid damage to Grantee's facilities. For purposes of this provision, notice to a utility location service in which Grantee participates shall be deemed notice to Grantee.

Remember, under any circumstances, you are required to call before you dig on the easement area. Call the utility location service in your area or State well in advance of digging, and don't dig before the utilities are marked. If you're not certain whom to call, phone the Grantee directly. Don't fail to do this, it is expensive if damage occurs and can be quite dangerous. If you normally excavate lower than where the facilities will be buried, ask that the installation be placed deep enough to afford you a safety factor.

Grantee agrees that all facilities shall be buried a minimum of ____ () inches below the surface of the land and Grantee further agrees to place all facilities at least ____ () inches below the flow line of all drainage ditches crossing said easement strip.

If you have plans on paper and are very persuasive, you may be able to convince the Grantee to agree to a relocation of their facilities should the need arise. It is apparent that a large pipeline can't be moved but smaller facilities are frequently relocated by Grantees. You must be willing to provide a new easement and right of way to cover the move and you should

also be willing to pay for the move. The best situation is to work closely with the Grantee to arrive at a location that can remain permanent.

If in connection with Grantor's future development of said land it is necessary that placement of Grantee's facilities be modified to permit Grantor to erect permanent structures within the easement strip, then, upon 90 days prior notice, Grantee shall commence such modifications at Grantor's expense, which expense shall be actual and reasonable. If in connection with said modifications it is necessary for Grantee to modify placement of Grantee's facilities, Grantor agrees to Grant and convey, at no additional consideration, a permanent easement to permit such modifications.

If you need assurances as regards damages in general, the following clauses should be sufficient.

Grantee agrees to take reasonable steps upon the completion of construction to restore the Grantor's lands, to the extent practicable, to their pre-construction condition.

Any fences damaged, severed or disturbed in any way during Grantee's activities shall be restored to at least the same condition as they existed prior to construction, all at the expense of Grantee.

Grantee shall repair or reimburse Grantor for any damage to the property of Grantor outside of the area of the easement caused by Grantee during construction and shall repair or reimburse Grantor for damage to property outside of the area of the easement caused by Grantee during maintenance, repair or removal of Grantee's facilities.

If you have invested in drain tile for your agricultural land then you may want further assurances that the integrity of the system will be maintained. You may wish to be present during construction so that you may observe the repairs to any damaged tiles. This is reasonable and well within your rights.

Grantee shall repair any drainage tile damaged as a result of Grantee's construction activities, and shall give Grantor or Grantor's representative a reasonable opportunity to inspect such field tile repairs, which repairs shall be done to Grantor's reasonable satisfaction, prior to backfilling.

While it is not a common occurrence, it may be necessary for rock to be brought to the surface during construction. If you live in a rocky area you have spent considerable effort clearing your fields. If rocks are brought to the surface they should be removed from the site. Very rarely, blasting will be required and you must insist upon the use of blasting mats so that rocks are not strewn across the landscape.

Grantee agrees to remove from Grantor's lands,

with reasonable diligence, all rocks larger than ____ () inches in diameter that are brought to the surface as a result of Grantee's construction activities. If in connection with Grantee's construction activities it becomes necessary for blasting of rock formations to occur, then, Grantee shall use blasting mats to restrict debris to said easement strip and any said debris shall be removed from all of Grantor's lands.

The Grantee wants access to the easement strip as provided in the Grant. You can protect yourself by delineating the access routes. During construction I have seen some dim bulbs drive diagonally from one corner of a section of land to the other with no regard for damages and with no thought of the repercussions of going outside of the right of way. If you are concerned that someone will take advantage of your good nature and drive across your fields, address your concern in writing.

Grantee shall be given reasonable access to said right of way strip, but, except with permission of the Grantor, Grantee's ingress and egress to said right of way strip shall be limited to existing lanes or such other areas specified by Grantor.

Liability suits are a normal occurrence these days and have become the chief source of income for some attorneys. You need to cover your rear before someone comes up and bites you. I am not an attorney but I have seen the following clauses attached to easements. Ideally you would be able to insulate

yourself from all claims resulting from the facilities being placed on your property. We don't live in an ideal world; people do crazy things that are beyond your control. If you exercise common sense you will limit your liability. The clauses say that you will not be negligent nor commit willful misconduct. The same holds true for the Grantee. If a circumstance develops that you just can't live with, call the Grantee. If that doesn't work call your attorney. Whatever you do, don't take matters into your own hands, they will prosecute you and the law will back them up. Contact your insurance company to find out if you have coverage adequate to cover the situation, including you, the Grantee and his contractor. If you need additional coverage for the duration of the project, the Grantee should pay for it. The following clauses serve to protect you from claims by the Grantor and other parties.

Except to the extent caused by the negligence or willful misconduct of Grantor, or Grantor's tenants, agents or assigns, Grantee agrees to indemnify and hold harmless Grantor and Grantor's heirs, successors and assigns against any claims or losses arising from damage or injury to Grantee's property, employees, agents or contractors occurring in the course of construction, installation, repair or maintenance of Grantee's facilities upon Grantor's lands.

Except to the extent caused by the negligence or willful misconduct of Grantor or Grantor's tenants, agents or assigns, Grantee agrees to indemnify and

hold harmless Grantor and Grantor's heirs, successors and assigns against any claims, suits or demands arising from damage or injury to third parties resulting from the negligent or willful misconduct of Grantee or Grantee's agents, employees or contractors occurring in the course of construction, installation, repair or maintenance of Grantee's facilities upon Grantor's lands.

Grantor shall not be liable to Grantee for accidental damage to Grantee's facilities arising from the operation of farm machinery within the easement area in the course of normal farming operations. Grantor also shall not be liable to Grantee for accidental damage to Grantee's facilities occurring in the course of excavating or digging in or about the easement area, providing, however, 1) Grantor and its agents and contractors shall at all times exercise reasonable care to avoid damage to Grantee's facilities, and 2) Grantor shall give Grantee not less than 3 days notice prior to engaging in construction activities within 10 feet of the easement, to permit Grantee to locate its facilities, and Grantor shall permit Grantee to have a representative present during such construction activity and follow Grantee's representative's reasonable suggestions, such as hand digging, to avoid damage to Grantee's facilities. For purposes of this provision, notice to a utility location service in which Grantee participates shall be deemed

notice to Grantee.

Let's assume you have a going concern. You want to make sure that you can continue operations and minimize the impact to your real and personal property. Keep in mind that the construction will most likely impact you for all of a growing season; and, unless the land is restored to its original or better condition the impact will last longer. You need to receive assurances about production. If the future yield on the impacted acres is lower, you should be compensated. You need to protect your livestock. You need to keep your good soil. If excavation is to be done then the double ditching practice should be employed. If erosion is going to be a problem then the Grantee must take action to prevent it.

If in connection with Grantee's construction activities it becomes necessary to excavate, then, Grantee agrees to remove and reserve the topsoil to a depth of ____ () inches before proceeding with deeper excavation. During backfilling, Grantee agrees to replace the reserved topsoil in its original location.

Grantee shall exercise due care to prevent injury to Grantor's livestock during construction activities. Grantee shall erect temporary structures or fences as Grantor and Grantee agree are appropriate or take other mutually agreed action necessary for this

purpose. If Grantor and Grantee mutually agree that due care requires removal of the livestock from the lands, then Grantee shall pay to Grantor all actual and reasonable costs associated with such removal, and reasonable costs of boarding said livestock which are in excess of amounts normally expended for maintenance of said livestock.

Grantee shall use appropriate construction practices to prevent erosion on the easement strip during construction and shall ensure that adequate erosion control measures are put in place at the conclusion of construction.

During and after construction the land will be cleared. You want all the debris to be removed from your land. You may have a special “old oak tree Grandpa planted” near the easement that you want to preserve at all costs. You may want the same type of vegetation to be put back in place. Maybe you don’t want chemicals used for maintaining the right of way because of drift problems or runoff to ponds or streams.

Grantee shall have the right to cut, trim or remove trees and other shrubbery, which is voluntary in growth and not decorative or used by Grantor for ground cover, which may encroach upon the easement herein conveyed. The specific vegetation that Grantee agrees not to trim, cut or destroy is shown in Exhibit “A” attached hereto. Grantee shall dispose of all cuttings and trimmings by

removing from the Grantor's lands.

No trenching shall be done within the drip area of any of Grantor's shade trees that are identified on Exhibit "A" attached hereto.

Grantee shall remove no trees larger than _____ feet () tall that are located outside the permanent easement strip.

Prior to construction, Grantee shall cause sod located in the easement strip area used by Grantor as lawn to be stripped. After construction, the Grantee shall compact the trench and replace the sod so stripped. If such stripping is not feasible, then Grantee shall lay new sod to Grantor's reasonable satisfaction.

Grantee shall not use any chemical defoliant, vegetation killers or weed killers upon Grantor's land without Grantor's express written permission.

Do you recall when you heard the story of the railroad coming across your land? Your forebears told you it was a good deal for the community and if the railroad ever went away the land would revert to you. Now you see the bikers and hikers wandering by the edges of your property all the time. That hiking trail is really not of much benefit to you. Someone forgot to mention that the ownership of the railroad right of way could be transferred or appropriated by some obscure agency. Well,

so much for past history. You want your land back if it is no longer used for its intended purpose. To be frank, this may not be feasible. To get as much protection as possible, you want to limit the ability to transfer the easement and provide for reconveyance to you. Here are some solutions that may help.

The easement and rights granted herein may not be sold or assigned except within the Grantee's family of companies, and, in the event of a merger or reorganization, the successors of the Grantee. Grantee agrees that the easement will not be used for purposes inconsistent with the stated purposes of this Grant.

In the event that Grantee has not completed installation of his facilities within five years of the date hereof, the Grantee shall reconvey said easement to Grantor or his heirs, successors or assigns by duly executed Quitclaim Deed.

If Grantee ceases to use the easement for the stated purposes for a period of more than five consecutive years, then Grantee shall reconvey said easement to Grantor or his heirs, successors or assigns by duly executed Quitclaim Deed.

At the time of signing the Grant you will either be compensated fully or receive an initial consideration. The initial consideration is a small amount needed to make the Grant binding and the balance must be paid before construction starts.

Everyone wants to think that they are being compensated the same as their neighbor. Generally the amount of compensation is consistent throughout the route. But I have also known of times when holdouts fare well. This can be a bone of contention but need not be. If you are very concerned, use the following clause.

Grantee warrants that the purchase price paid per square unit of land for this Grant is not less than that price paid for similar land in _____ County, _____. If Grantee agrees to pay another landowner a higher price per square unit of land, then, Grantee shall make an additional payment to Grantor to equal the difference between the price paid to Grantor per square unit of land and the higher price per square unit of land paid to the other landowner.

In order to avoid problems concerning compensation for damages, specific clauses may be added, as you feel necessary, such as the following.

Grantee agrees to pay the Grantor fair market value for any trees destroyed or severely damaged as a result of Grantee's construction, maintenance, repair or removal activities.

If Grantee destroys any trees or similar vegetation used by Grantor for decorative purposes, Grantee shall pay Grantor the fair market value thereof.

The Grant does not specify how much of your land is going to be impacted by the installation of the facilities. The Grantee may want you to sign a separate agreement regarding a temporary easement granting workspace for construction purposes. The Grantee will be responsible for damages occurring to this additional property and will have to do restoration. The Grantee may or may not offer compensation for this temporary easement but it should be understood that this easement is only temporary and it should so state in the agreement. Make certain that all of the additions to the Grant of Easement and Right of Way are included in this additional agreement, particularly in regard to liability.

These are the most prominent matters that need to be addressed in the Grant and you probably won't feel inclined to employ most of them. You may need one or two or none. Since the wording for these clauses is somewhat specific to your own situation, talk to your lawyer.

You can propose any clauses you like; the worst that can happen is that they will say no. They may submit a revised clause for your consideration. All of this is reasonable negotiation.

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Chapter IV - Eminent Domain

Let's assume the Grantee has the right of Eminent Domain. The Grantee must still negotiate in good faith and hopefully you will reach an agreement on the terms of the Grant. If you and the Grantee have come to an impasse, he will determine the time frame in which to file his condemnation suit so that construction may start on time. He will have to prove that he has the power of Eminent Domain, prove that he has negotiated in good faith, prove that the taking is in the public's interest, and prove that the compensation offered for the parcel is reasonable. Once he files suit, he becomes the Condemnor and you the Condemnee.

The amount of work involved in proving his case is considerable. He will have his attorneys prepare and present the case. He must have a legal survey performed to arrive at a description for the parcel he desires. He must assemble all of the notes of the agent or agents that negotiated with you. He must have an appraisal done by a qualified appraiser. He must justify the size of the parcel and the construction methods by gathering information from his engineers and contractors. He must have all of his expert witnesses prepared to testify. He will prepare a coherent file that will contain all of this information to be presented to the court. He must make arrangements to have all of his witnesses present on the appointed date of the hearing. The cost of all this work is considerable. Before you head in to court the Condemnor may make a final offer and you are free to accept or reject it.

The Condemnor will prove his case, deposit the stated value

of the parcel with the court and will be able to take possession of the parcel a short time later.

The procedures for the actual trial vary from state to state and the following is just one scenario from the point of view of a layman.

Unless the Grantee has been dishonest in his dealings with you, the only bone of contention will be the amount of the award to you. If you are going to contest the amount, you should be represented by your own attorney who will call your own expert witnesses, namely an appraiser or appraisers. Next, the judge, if he thinks it is merited, will refer your case to a three-person panel which will conduct hearings as to the value of the parcel. The Condemnor presents his witnesses and you present yours. The panel makes a determination and sends a report to the court. The court in most situations approves the amount and you receive the difference between the original amount and the court approved amount, if any. If the Condemnor is required to pay your legal expenses and just before the case is closed, your attorney will present bills for all services performed on your behalf and the judge will determine if they are fair and reasonable and hopefully the Condemnor will be ordered to pay them. Your attorney then distributes the monies to your witnesses and retains his fee. You will have access to your payment for the parcel after a short wait.

You do have the right to appeal the decision and a trial by jury. In this case the payment for the parcel stays with the court and your attorney files an appeal with the court that has jurisdiction.

If you think that you have been offered less than the fair market value of the parcel, by all means pursue your options, but keep a close watch on your expenses and the bottom line.

If you and a large number of your neighbors are diametrically opposed to the proposed project, you can form an organization to fight it. Hire an attorney with experience and expertise in this type of case to meet with the group and have him explain what you and he can do to stop the project. I have seen many such groups formed and have had to deal with them. Generally a few meetings between you, the Grantee and his representatives who can explain the project and its need, will go a long way to alleviating vague concerns about the project. One memorable project that I was supervising was threatened with a sit-in. The landowners were misinformed as to the location of the installation which was to be inside the right of way of a state highway. One meeting was all it took to straighten things out, but I would have continued meeting with the folk if they still needed more assurances.

The only successful opposition effort that I have experienced was a project in one of the more liberal states in the Midwest. The landowners were able to lobby their state representatives and have them insist that the facilities be installed on public right of way. This is a rare case and it was synergistic that the legislature was in session and the Grantee had been lobbying hard for certain legislation that was coming up for a vote. So I guess if you really want to have a shot at stopping a project from coming across your land, you'd better get the lawmakers involved, the sooner the better.



Chapter V - The Construction

Okay, you have successfully negotiated your Grant of Easement and Right of Way; it has been signed, notarized and recorded at the courthouse. The initial consideration was just a down payment and now you have been paid in full. If you haven't been fully compensated and the contractor shows up, shut him down - he is trespassing and the terms of the Grant have been violated.

The best situation is to be present during construction; if you can't be there personally, arrange for someone that you trust to be present as your representative. Make sure your representative knows what your possible concerns may be. Give them a notebook and camera with lots of film. Give them a copy of your Grant and highlight anything that pertains to the actual construction. Make note of phone numbers for the agent, contractor and right of way office. In a well-run operation, the same right of way agent will be around during construction; the agent is your means of communication with the Grantee and his contractor, so introduce your representative to him, if necessary.

The problems that occur during construction usually stem from a breakdown in communication. Even though the contractor has been provided with specific information for each tract of land, he may in fact overlook some details. The project can have different phases all going on at the same time. The instructions which a crew needs to follow may be in a truck

miles from where their work is being performed. This means that it is to your benefit to be present during construction.

Contractors are usually regional in scope of work. It may be possible for you to do some research to find out how they performed on similar projects. You can also go up the line to see what has been done a few miles away. If you see some glaring problems get in touch with your right of way agent so that the same thing doesn't happen to you.

The first on the site will be the surveyors who will mark the route. Next a prep crew of some kind will be along to clear the right of way; they will cut fences, remove trees and any other obstacles. The surveyors may return to remark the lines. The main installation will begin and may be as simple as moving a vibratory plow along the right of way or as complicated as using huge earthmovers to dig large trenches or pits. After the facilities are installed and inspected the ground will be put back to its original contour. A finish crew will do final grading and restore the area as near to original as possible. Depending upon the complexity, this process may take a day or weeks.

Be sure to check that the contractor exercises due diligence during construction. Trenches to be left open overnight need to be fenced so no one falls into them. If you have livestock in the area, make certain the fence will hold. Your right of ingress and egress should be maintained at all times. If a trench crosses your driveway it should be backfilled right away or bridged in some manner. If you are going to try to save that old oak tree, better put a big sign on it so there is no mix up.

It may be that the contractor needs an area to store equipment and materials. He may approach you to rent some land for this purpose. If it were I, I'd have him work through the right of way agent. In doing this, you maintain the Grantee's interest in ensuring your well being and keep them involved in the whole process. If something goes wrong I would prefer to look to the Grantee to make it right.

You are required to use common sense during the construction process. If you see a dangerous situation, bring it to the attention of the right of way agent or the contractor. However, it is usually inadvisable to become directly involved in remedying the situation. Your best tool is your telephone. Keep calling until you get some response. If you can't find anyone involved with the project, and as a last resort, call the public authorities.

It is possible that boring may be done under roads or other obstacles. It is extremely important to keep an eye on this process. A clay material may be used to facilitate the boring and provide a watertight boring. It is nasty stuff to clean up. If it is spilled above ground, no water will penetrate the surface and nothing will grow. If the borers are using clays, make them scrape it up and remove it from your lands.



Chapter VI - Damage Settlement

The construction is complete. All facilities are in place. The Grantee has inspected the project and accepted the final installation. Hopefully, the land has been restored to pre-construction conditions. Grassy areas have been reseeded and fences repaired.

Now it is time to calculate your actual damages for the construction. This doesn't mean you have to settle damages immediately. Don't consider settling until you are satisfied with the restoration. Take out your photos and notes and figure out what has been impacted. If you agreed to avoid planting a crop on the easement strip to facilitate construction then you are entitled to receive compensation as if you had planted a crop. To calculate the total area impacted, use your tape measure. Document your measurements with photos. If you have damage outside of the right of way document that. Do the math and determine the total area impacted by construction. Based upon your yield history calculate the yield loss you suffered. The price of the particular crop can be determined by calling your usual grain elevator or distributor. Calculate the total monetary damages using price, area and yield. This is the actual damage to you for crops.

If trees were removed during construction then you will be compensated for them. If hardwood was removed you can determine its value by making a few calls, starting with the county extension service. If softwood came out you should be

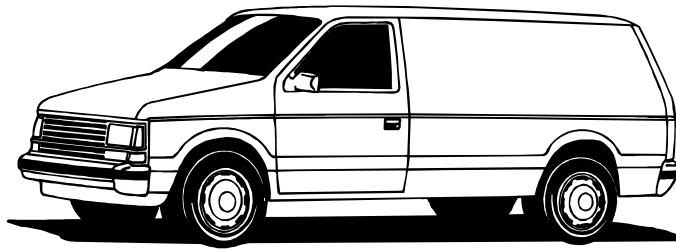
given its value for pulp or other uses common to your area.

It is possible to have coincidental damages and you should document these also. Perhaps the contractor ran over a length of irrigation pipe or a culvert was squished. This isn't open season for having all your pesky problems fixed, limit your claims to damages actually suffered due to the Grantee's activities. The Grantee is responsible for damages resulting from construction and their use of the Easement and Right of Way.

Damages can have long term effects. Future yield problems may be attributed to soil compaction during construction. The Grantee is responsible for any such problems. Again, document the results and contact the Grantee.

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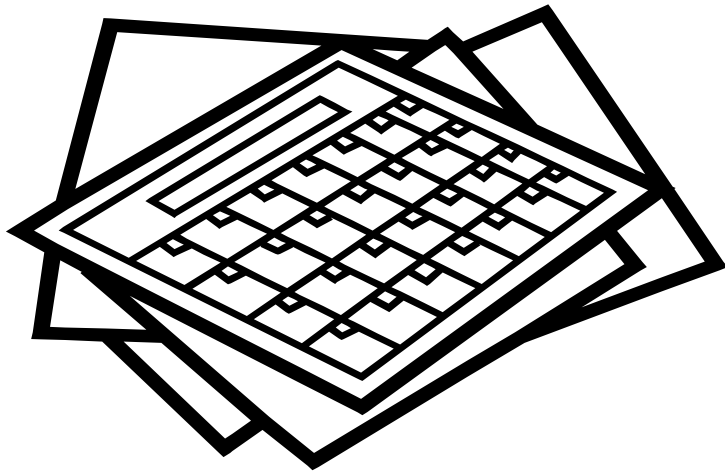


Chapter VII - Maintenance

From time to time the Grantee will perform maintenance on their right of way and facilities. They have the rights of ingress and egress as conveyed in the Grant. For the most part, the Grantee will not enter the right of way directly but will have regular aerial inspections or will drive by the site.

If it becomes necessary for the Grantee to enter the right of way, damages can occur and you will be entitled to compensation. Document any such damages and contact the Grantee. The Grantee has a responsibility to compensate you for any damages due to any of his activities.

If you have ongoing problems with erosion or yield loss contact the Grantee and tell them the right of way needs maintenance. If a weather-related situation develops, such as a washout, call the Grantee, they will be glad to make repairs to protect their facilities.



Chapter VIII - As Time Goes By

It is not often that common folk have an opportunity to negotiate with large corporations to provide something the corporation wants. This can be a very good experience or one of the worst you have ever lived through. It will certainly be enlightening.

Remember to remain focused on your needs and those of future generations. Keep an open mind and be sure to listen to what the company has to say, hopefully they will do likewise. You can reach an agreement that is satisfactory to both parties if you are diligent. Do your homework and stay alert. If you are over your head, call an attorney. If the attorney is not doing what you want, find another - there are many lawyers that specialize in this area.

With perseverance you will have negotiated a deal that is satisfactory to both sides and one that you and future generations can live with.

SAMPLE JOURNAL

Date of meeting: _____

Present: _____

Purpose of meeting: _____

Brief minutes of meeting: _____

Promises or commitments made (by whom, to whom) _____

General impressions: _____

Next meeting date & time _____

Information required for next meeting: _____

Prepared by: _____

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